IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.11.2007

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR. JUSTICE N.PAUL VASANTHAKUMAR

W.P. NOS. 27557, 26631, 25382, 25383 OF 2007
W.P. NO. 29611 OF 2005
AND
M.P. NOS. 1 OF 2007
W.P.M.P. NO. 35458 OF 2005

W.P. Nos. 27557 & 26631 of 2007 :

M/s. Indian Bank
Esplanade Branch
No.6, Esplanade Road
Esplanade
Chennai 600 108. .. Petitioner

- Vs -

1. M/s.Mona Packaging Products
   rep. by its Partner
   Mr. Shahul Hameed
   No.S-40, Chettiar Agaram Road
   Behind Kumaran Theatre
   Vanagaram, Chennai 602 102.

2. Mr. M.M.Shahul Hameed
3. Mr. S.M.Sheik Dawood
4. Mr. M.S. Md. Al Ameen

5. M/s.ICMC Packings Ltd.
   rep. by its Partner
   No.36, Ambattur Industrial Estate
   Ambattur, Chennai 600 058.

6. The Debts Recovery Appellate Tribunal
   No.55, Ethiraj Salai
   Chennai 600 008. .. Respondents

W.P. Nos. 25382 & 25383 of 2007 :

M/s.ICMC Packings Ltd.
rep. by its Partner
No.36, Ambattur Industrial Estate
Ambattur, Chennai 600 058. .. Petitioner

- Vs -

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1. M/s.Mona Packaging Products
   rep. by its Partner, Mr. Shahul Hameed
   No.S-40, Chettiar Agaram Road
   Behind Kumaran Theatre
   Vanagaram, Chennai 602 102.

2. Mr. M.M.Shahul Hameed
3. Mr. S.M.Sheik Dawood
4. Mr. M.S. Md. Al Ameen

5. M/s. Indian Bank
   Esplanade Branch
   No.6, Esplanade Road
   Esplanade, Chennai 600 108.

6. The Debts Recovery Appellate Tribunal
   No.55, Ethiraj Salai, Chennai 600 008. .. Respondents

W.P. No. 29611 of 2005 :

M/s.Mona Packaging Products
rep. by its Partner, Mr. Shahul Hameed
No.S-40, Chettiar Agaram Road
Behind Kumaran Theatre
Vanagaram, Chennai 602 102. .. Petitioner

- Vs -

1. The Recovery Officer
   Chennai Debts Recovery Tribunal - II
   4th Floor, "Spencer Plaza"
   No.770-A, Anna Salai
   Chennai 600 002.

2. M/s. Indian Bank
   Esplanade Branch
   No.6, Esplanade Road
   Esplanade, Chennai 600 108. .. Respondents

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W.P. Nos.27557 & 25382 of 2007 filed for the issuance of a writ of certiorarified mandamus calling for the records pertaining to the order dated 01.03.2007 passed in M.A. No.214 of 2007 by the Debts Recovery Appellate Tribunal, Chennai and quash the same and consequently direct the respondents 1 to 4 to hand over the vacant possession of the property and the movables sold as stated therein.

W.P. Nos. 26631 & 25383 of 2007 for the issuance of a writ of certiorarified mandamus calling for the records pertaining to the order dated 23.05.2007 passed in I.A. No.450 of 2007 in IN No.307 of 2007 by the Debts Recovery Appellate Tribunal, Chennai and quash the same and consequently direct the respondents 1 to 4 to hand over the vacant possession of the property and the movables sold as stated therein.

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W.P. No.29611 of 2005 filed for the issuance of a writ of certiorarified mandamus calling for the records of the 1st respondent's auction sale notice under Recovery of Debts due to Banks and Financial Institutions Act, 1993, fixing the auction sale of the petitioner's property comprised of land and building in Chettiar Agaram Road and Village, No.95, Siva Boodham Village, Vanagaram, Saidapet Taluk, Chengai MGR District, measuring an extent of 7269 Sq.ft., comprised in survey No.40, New Survey No.40/4, situated within the sub-Registration District of South-Madras on 14.09.2005 at 2.30 p.m. And to quash the same as illegal and invalid and to direct the 2nd respondent to extend the time till 30.11.2005 for the petitioner to pay of the sum of Rs.19 lakhs under the One Time Settlement (OTS) sanctioned by the 2nd respondent.

For Petitioners: Mr. Jayeesh Dolia for M/s.Aiyar & Dolia in W.P. Nos. 27557 & 26631 of 2007
Mrs. Narmada Sampath in W.P. No.25382 & 25383 of 2007
Mr. Ashok Menon for M/s.Menon & Goklaney Associates in W.P. No.29611 of 2005

For Respondents : Mr. A.Muralidharan for RR-1 to 4 in W.P. Nos. 27557, 26631, 25382 & 25383/07
Mr.Jayeesh Dolia for M/s. Aiyar & Dolia for R-2 in WP 29611/05 for R5 in WP 25382/07 & 27383/07 WP 26631/07
Mrs. Narmada Sampath for R5 in WP 26631/07 & in WP 27557/07

COMMON ORDER

S.J.MUKHOPADHAYA, J.

As all these writ petitions arise out of a common proceeding initiated by the Debts Recovery Tribunal (hereinafter referred to as 'DRT'), they were heard together and disposed of by this common order.

2. In two writ petitions, W.P. No.27557/07 (petitioner M/s.Indian Bank) and W.P. No.25382/07 (petitioner M/s.ICMC Packaging Ltd.), the petitioners have challenged order dated 1st March, 2007, passed by Debts Recovery Appellate Tribunal, Chennai, (hereinafter referred to as 'DRAT') in M.A. No.214/06. Further prayer has been made to direct the concerned respondents 1 to 4 to hand over vacant possession of the property and the movables sold.

Aforesaid two petitioners, M/s.Indian Bank and M/s.ICMC Packaging Ltd., are also petitioners in W.P. Nos.26631 and 25383/07. In these cases, they have challenged order dated 23rd May, 2007, passed by DRAT, Chennai, in I.A. No.450/07 in I.N. No.307/07 with further prayer to direct respondents 1 to 4 to hand over vacant

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possession of the property and movables sold.

W.P. No.29611/05 has been preferred by M/s.Mona Packaging Products (Borrower), challenging auction sale notice issued under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as 'RDDB & FI Act') fixing auction sale of said petitioner's property comprised of land and building in Chettiar Agaram Road and Village, No.95, Siva Boodham Village, Vanagaram, Saidapet Taluk, Chengai MGR District, covering an extent of 7,269 sq.ft., comprised in survey No.40, new survey No.40/4, constituted within the Sub-Registration District of Saidapet and Registration District of South Madras. Further prayer has been made to direct the 2nd respondent of the said case (M/s.Indian Bank) to extend the time for petitioner to pay the sum of Rs.19 Lakhs under the one time settlement as was earlier sanctioned by the said 2nd respondent Bank.

3. By impugned order dated 1st March, 2007, in M.A. No.214/06, having noticed that the borrower, M/s.Mona Packaging Products and 3 others, who were appellants before DRAT, Chennai, had deposited a sum of Rs.40 lakhs, they were granted opportunity to prosecute the application, which were pending before DRT, Chennai and the appeal was allowed. The auction purchaser, i.e., M/s.ICMI Packaging Ltd., who is the petitioner in other two cases, has been allowed to withdraw the amount already deposited by it.

By subsequent order dated 23rd May, 207, in I.A. No.450/07 in I.A. No.307/07, DRAT, Chennai, at the instance of the borrower, M/s.Mona Packaging Products and 3 others, granted interim stay of further proceeding on the condition that the appellant (borrower) shall deposit a sum of Rs.10 lakhs with the bank in an interest earning no lien account on or before 8th June, 2007.

4. The case having a chequered history, it is desirable to notice relevant facts and the manner in which the parties acted and the case proceeded.

M/s.Mona Packaging Produces and 3 others (borrowers), who are respondents 1 to 4, preferred by bank, availed open cash credit facility to the limit of Rs.35,000/=; clean supply bill purchase facility to the limit of Rs.4.75 lakhs and minimum term loan to the limit of Rs.2,10,626.15 for which they executed security documents and created the mortgage. On 23rd March, 1995, the aforesaid borrowers (respondents 1 to 4) availed additional credit facility. Further credit facility was availed by those borrowers from the bank on 19th March, 1988, as acknowledged by the borrowers.

The 1st respondent, M/s.Mona Packaging Products (petitioner in one of the case) is a partnership firm of which respondents 2, 3 and 4 are the partners. The 2nd respondent, Mr.M.M.Shahul Hameed is the father of respondents 3 and 4, namely, Mr.M.S.Sheikh Dawood and Mr.M.S.Md. Al Ameen.

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The bank filed a claim case, O.A. No.2081/01 before DRT-II, Chennai, for Rs.45,62,659.26 together with interest @ 18.50% p.a. with quarterly rest from the date of application till the date of realisation in full with cost of the application. Initially respondents 3 and 4 were set ex-parte on 12th Feb., 2002 and subsequently respondents 1 and 2 were also set ex-parte on 2nd May, 2002. The borrowers, who were defendants 1 to 4, filed I.A. No.500/02 for setting aside the ex-parte decree, which was dismissed on 15th Sept., 2003 for non-prosecution. O.A. No.2081/01 was decreed for Rs.45,62,659.26 together with interest @ 18.50% p.a. with quarterly rest by order dated 11th May, 2004. Defendants 1 to 4, who are respondents 1 to 4 in the connected writ petitions, were also made personally liable with a right to enforce the mortgage. Debt Recovery certificate No.83/04 was issued on 13th July, 2004 for Rs.76,14,942.18, comprising of Rs. 45,62,659.26 as principal amount, Rs.30,04,277.92 towards interest and Rs.48,005/= as costs. The Recovery Officer issued notice under Rule 2 of the Income Tax Act on 19th July, 2004 and issued an order of attachment on 21st Dec., 2005. The 23rd of March, 2005 was the date fixed for auction sale, but the said auction could not take place as the 1st respondent, M/s.Mona Packaging Products filed a writ petition, W.P. No.9738/04 before this Court and obtained interim order on 22nd March, 2005. The interim order was passed with a condition to deposit Rs.20 lakhs within eight weeks. The Court made it clear that order of injunction shall stand vacated on failure to comply with the Court's direction. Having obtained injunction order, the 1st respondent stalled the auction sale, but did not choose to deposit the amount of Rs.20 lakhs.

Thereafter, another date of auction was fixed, which was scheduled to be held on 14th Sept., 2005. This time, again to stall the auction, the 1st respondent, M/s.Mona Packaging Products preferred another writ petition, W.P. No.29611/05 and obtained another interim order on 27th Sept., 2005, on condition that it will deposit a sum of Rs.40 lakhs within eight weeks failing with the Bank can proceed with the auction. In this way, the auction, which was to take place on 14th Sept., 2005, was stalled, but the amount of Rs.40 lakhs was not deposited by the said respondent.

The Recovery Officer, thereafter, took steps to bring the property on auction sale on 1st March, 2006. To stall such proceeding of auction sale, which was to take place for the third time, this time, respondents 1 to 4 (borrowers) preferred I.A. Nos.98 to 100/06 in O.A. No.2081/01 before DRT. Prayer was made to set aside the exparte decree dated 11th May, 2004; to condone the delay in filing application and for interim injunction to restrain the bank from bringing the property for auction on 1st March, 2006. On 1st March, 2006, DRT-II, Chennai, again directed the borrowers to deposit a sum of Rs.40 lakhs within 7 days. The Recovery Officer was allowed to proceed with the auction, but it was ordered not to confirm the sale. After obtaining such order, the respondents 1 to 4 (borrowers) again did not choose to comply with the order nor deposited the amount of Rs.40 lakhs. They again filed one I.A. No.113/06 seeking extension of time till 31st March, 2006, for

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depositing the amount. The DRT having noticed the aforesaid fact, by its order dated 20th March, 2006, directed the Recovery Officer to proceed in accordance with law. The Recovery Officer, accordingly, issued sale certificate on 31st March, 2006 for Rs.55.10 lakhs, to the auction purchaser, M/s.ICMC Packaging Ltd. An advocate commissioner was appointed by the Recovery Officer on 22rd March, 2006 to evict respondents 1 to 4 for giving possession in favour of the auction purchaser.

This time, respondents 1 to 4 moved before DRAT in M.A. No.214/06 and sought to set aside the order dated 20th March, 2006, passed in I.A. No.113/06 with further prayer to grant extension of time to them to comply with the order dated 1st March, 2006. Such prayer was allowed by DRAT without discussing the aforesaid fact, mainly on the ground that the borrowers have deposited the amount of Rs.40 lakhs. What is the effect of the auction sale; whether such auction sale could be set aside without following the provision of law and without asking to set aside such auction sale, these questions were never discussed nor deliberated by the DRAT.

5. So far as the interlocutory application Nos.98 to 100/06 and I.A. Nos.222 and 223/06 are concerned, they were taken up by DRT-II, Chennai. Having noticed the fact that no explanation for condoning the delay had been given, the Tribunal rejected the application for condition of delay. Consequent upon I.A. Nos.98 to 100/06, I.A. Nos.222 and 223/06 were also dismissed by common order dated 14th May, 2007.

The DRAT, by impugned order dated 23rd May, 2007, in I.A. No.450/07 in I.N. No.302/07, passed interim stay of all proceeding on condition that the borrowers (appellants before DRT) deposit a sum of Rs.10 lakhs with the bank in an interest earning no lien account on or before 8th June, 2007.

6. Learned counsel for the borrowers – petitioner in W.P. No.29611/05, fairly conceded that in view of subsequent proceeding, including sale certificate issued on 31st March, 2006, no order passed by DRT, the said writ petition has lost its importance.

Counsel appearing on behalf of the bank and auction purchaser also informed that W.P. No.27557/07 preferred by bank and W.P. No.25382/07 preferred by auction purchaser against order dated 1st March, 2007, passed by DRAT, Chennai, have become infructuous in view of the subsequent order dated 23rd May, 2007.

7. In the present case, the only question that arises for consideration is whether it was a fit case for DRAT to allow and extend further time in favour of the borrowers to deposit certain amount.

8. In the case of *Smt. Periyakkal – Vs – Smt. Dakshyani* reported in *AIR 1983 (2) SC 428*, the Supreme Court held that for mere asking for extension of time, it should not be extended ordinarily. It will be granted in rare cases to prevent manifest injustice.

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9. It will be evident that the borrowers were not agreeable to pay the amount as decreed. In the writ petition preferred by them, W.P. No.26911/05, prayer has been made to extend time to pay a sum of Rs.19 lakhs under the one time settlement. When the original application was taken up, initially the Tribunal had to set exparte two of the respondents (respondents 3 and 4) in Feb., 2002 and after three months, the other two respondents (respondents 1 and 2) were set exparte. Though respondents 2, 3 and 4 are blood relations, i.e., father and sons, they acted in the manner as if the 2nd respondent (father) had no knowledge that the case was set exparte against his sons, respondents 3 and 4. After the decree, when notice for recovery under Rule 2 was issued on 19th July, 2004, no action was taken by the borrowers. It is only when the date of auction sale was fixed, a writ petition (W.P. No.9738/05) was preferred and after interim order was obtained, they allowed cancellation of the date of auction, but, thereafter, the order of the Court was not complied with; Rs.20 lakhs was not deposited and the said W.P. No.9738/05 was allowed to be made infructuous. Similarly, when the second date of auction was fixed, i.e., 14th Feb., 2005, by filing another writ petition, W.P. No.29611/05, the date of auction sale was deferred again by obtaining an interim injunction and again the condition of deposition of Rs.40 lakhs was not complied with and the said writ was also allowed to be made infructuous. The *modus operandi* of the borrowers continued even thereafter when they moved against the 3rd date of auction. This time, instead of moving before this Court, having moved twice earlier, moved before DRT by filing IA Nos.98 to 100/06 and prayed for interim injunction restraining the bank from bringing the property for auction on 1st March, 2006. This time also the borrower became successful in obtaining a conditional order of depositing Rs.40 lakhs, but auction sale was allowed to proceed, and it was ordered not to confirm. Again, after obtaining such order, the borrowers did not choose to deposit the amount of Rs.40 lakhs till sale certificate was issued on 31st March, 2006 in favour of the auction purchaser for a sum of Rs.55.10 lakhs. When the matter was taken up to give possession of the property in favour of the auction purchaser, a miscellaneous appeal was preferred before DRAT.

10. The aforesaid fact clearly shows the intention of the borrowers that they neither intended to pay the amount within the time and always intended to defer the auction sale taking advantage of interim order passed by one or other court and then to get the cases infructuous.

In the circumstances, on mere asking for time, the DRAT should not have granted time to the borrowers. On the other hand, explanation should have been asked for from the borrowers as to why it did not choose to deposit the amount within time when the High Court directed to deposit such amount of Rs.20 lakhs and Rs.40 lakhs by its order dated 22nd March, 2005 and 27th Sept., 2005 respectively. Without ascertaining such position, the Tribunal should not have extended the time, which otherwise amounts to extension of time as was allowed by High Court by its order dated 27th Sept., 2005. As

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the borrowers, respondents 1 to 4 in the connected writ petitions had not come earlier with clean hands either before this Court or before the Tribunal, or before the Appellate Tribunal, it was not a fit case for extension of time.

We, accordingly, set aside the order dated 1st March, 2007 and **23rd May 2007** passed by DRAT and allow the writ petitions, W.P. Nos. 26631 & 25383/07 preferred by the bank and the auction purchaser and dismiss the writ petition, W.P. No.29611/05 preferred by the borrowers. W.P. No.27557/07 preferred by bank and W.P. No.25382/07 preferred by auction purchaser against order dated 1st March, 2007, passed by DRAT, Chennai, having become infructuous are disposed of. Consequently, connected miscellaneous petitions are closed. In the facts and circumstances, we impose a cost of Rs.10,000/= (Rupees Ten Thousand only) on the borrowers to be paid in favour of the Indian Red Cross Society, Tamil Nadu Branch, Egmore, Chennai 600 008, within two months.

Let a copy of this order of this order be communicated to the Indian Red Cross Society, Tamil Nadu Branch, Egmore, Chennai 600 008, for its information.

GLN

Sd/
Asst.Registrar (C.S-I)
6.11.2007

Corrected as per order of
this Court daed 10/12/2007

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To
1. The Debts Recovery Appellate Tribunal /
No.55, Ethiraj Salai,Chennai 600 008. /
2. The Recovery Officer, /
The Debts Recovery Tribunal - II, /
4th Floor Spencer Plaza,Anna Salai, /
Chennai-2. /**TO BE SUBSTIUTED TO THE**
3. M/s. Indian Bank /**DESPATCHED ON 15/10/07**
Esplanade Branch,No.6, /
Esplanade Road,Esplanade, /
Chennai 600 108. /
4.The Indian Red Cross Society, /
Tamil Nadu Branch, Egmore, /
Chennai-8. /
+1cc to M/s. Aiyar & Dolia, Advocate SR72675/
KM (CO)
km/7.11.

W.P. NOS. 27557, 26631,
25382 & 25383 OF 2007 AND
W.P. NO. 29611 OF 2005
Pronounded on 05.11.2007

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